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Letter dated 21 July 2008 from the Permanent Observer of the African Union to the United Nations addressed to the President of the Security Council

Pursuant to Article 54 of the Charter of the United Nations, I have the honour to forward the attached communiqué adopted by the African Union Peace and Security Council at its 142nd meeting, held on 21 July 2008, in relation to the application made on 14 July 2008 by the Prosecutor of the International Criminal Court for a warrant of arrest under article 58 of the Rome Statute of the International Criminal Court against the President of the Republic of the Sudan (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Lila Hanitra **Ratsifandrihamanana**
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Annex to the letter dated 21 July 2008 from the Permanent Observer of the African Union to the United Nations addressed to the President of the Security Council

[Original: English and French]

Communiqué of the 142nd meeting of the Peace and Security Council

The Peace and Security Council of the African Union (AU), at its 142nd meeting held on 21 July 2008, adopted the following decision in relation to the application made on 14 July 2008 by the Prosecutor of the International Criminal Court (ICC) for a Warrant of Arrest under Article 58 of the Rome Statute of the ICC against the President of the Republic of the Sudan:

Council,

1. **Takes note** of the statements made by the representative of the Government of the Sudan and the representative of the League of Arab States, as well as the information provided by the Commission, including the consultations undertaken by the Chairperson of the Commission with the United Nations and other international stakeholders and the discussions that the Commissioner for Peace and Security had with the President of the Republic of the Sudan and other high-level Sudanese officials in Khartoum, on 15 July 2008;

2. **Reiterates** AU's unflinching commitment to combating impunity and promoting democracy, the rule of law and good governance throughout the entire continent, in conformity with its Constitutive Act, and, in this respect, **condemns once again** the gross violations of human rights in Darfur;

3. **Recalls** the press statements issued at the end of its meetings held in Addis Ababa on 19 June 2006 and 11 July 2008, respectively, following briefings by the ICC on its activities in Africa, as well as the communiqué issued by the Commission on 14 July 2008, following the application made by the ICC Prosecutor. In this respect, Council **reaffirms** its statement of 11 July 2008, in which it expressed its strong conviction that the search for justice should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace and reiterated AU's concern with the misuse of indictments against African leaders, in conformity with decision *Assembly/AU/Dec.199(XI)* on the Abuse of the Principle of Universal Jurisdiction, adopted by the 11th Ordinary Session of the Assembly of the Union held in Sharm El Sheikh, Egypt, on 30 June and 1 July 2008;

4. **Further recalls** resolution 1593(2005) of 31st March 2005, in which the United Nations Security Council, while referring the situation in Darfur since 1 July 2002 to the ICC Prosecutor, also emphasized the need to promote healing and reconciliation, and encouraged, in that respect, the creation of institutions involving all sectors of Sudanese society, such as truth and/or reconciliation Commissions, with AU and international support as necessary;

5. **Stresses** that, in accordance with the Rome Statute, the ICC is complementary to national criminal jurisdictions, which have therefore the primary responsibility of investigating or prosecuting cases over which they have jurisdiction;

6. **Recalls** the principle of the presumption of innocence, as a general principle of law which is enshrined in the Rome Statute of the ICC and is a guiding principle for both national and international judicial processes;

7. **Stresses** the need for international justice to be conducted in a transparent and fair manner, in order to avoid any perception of double standard, in conformity with the principles of international law, and **expresses concern** at the threat that such development may pose to efforts aimed at promoting the rule of law and stability, as well as building strong national institutions in Africa;

8. **Notes with satisfaction** the sustained efforts being made by the AU and the United Nations to accelerate the deployment of the African Union/United Nations Hybrid Operation in Darfur (UNAMID) and ensure the resumption of the political talks, including the appointment of a Joint AU/UN Chief Mediator, Mr. Djibril Yipènè Bassolé, as well as the progress recently achieved in the implementation of the Comprehensive Peace Agreement (CPA) signed by the Government of the Sudan and the Sudan People's Liberation Movement/Army (SPLM/A), including the Road Map for Return of IDPs and Implementation of Abyei Protocol of 8 June 2008 and the passing and enacting of the Electoral Law 2008;

9. **Expresses its conviction** that, in view of the delicate nature of the processes underway in the Sudan, approval by the Pre-Trial Chamber of the application by the ICC Prosecutor could seriously undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur and the promotion of long-lasting peace and reconciliation in the Sudan as a whole and, as a result, may lead to further suffering for the people of the Sudan and greater destabilization with far-reaching consequences for the country and the region;

10. **Further expresses** its conviction that, in order to achieve long-lasting peace and reconciliation in Darfur, it is imperative to uphold the principles of accountability and bring to justice the perpetrators of gross human rights violations in that region;

11. In light of the above, and in order to address in a mutually reinforcing manner the inter-linked issues of combating impunity and promoting peace, reconciliation and healing, Council:

i) **requests** the United Nations Security Council, in accordance with the provisions of Article 16 of the Rome Statute of the ICC, to defer the process initiated by the ICC, taking into account the need to ensure that the ongoing peace efforts are not jeopardized, as well as the fact that, in the current circumstances, a prosecution may not be in the interest of the victims and justice,

ii) **Invites** the Commission to take all necessary steps for the establishment, within a period of 30 days following the adoption of the present decision, of an independent High-Level Panel made up of distinguished Africans of high integrity, to examine the situation in depth and submit recommendations to Council on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed, including through the establishment of truth and/or reconciliation Commissions, with the active involvement of the AU and its relevant institutions and, as necessary, the support of the larger international community. In so doing, this Panel should take into

account the work done by the AU to contribute to the promotion of healing and reconciliation in Darfur, in the context of paragraph 5 of resolution 1593 (2005), including the recommendations made by the meetings convened by the AU Commission in Addis Ababa on 2 and 3 May and 17 and 18 October 2005, as well as the efforts deployed by the African Commission on Human and People's Rights,

iii) **encourages** the Sudanese parties, with the support of the Joint Chief Mediator, to ensure that issues of impunity, accountability and reconciliation and healing are appropriately addressed during the negotiations aimed at reaching a comprehensive peace agreement, as well as in the context of the Darfur-Dafur Dialogue and Consultation (DDDC),

iv) In the meantime, and in line with the principle of complementarity as enshrined in the ICC Rome Statute and relevant Sudanese laws, **urges** the Government of the Sudan to take immediate and concrete steps to investigate human rights violations in Darfur and bring to justice their perpetrators, and to keep the AU fully and continuously informed of progress made in this respect,

v) **requests** the Commission to regularly appraise the United Nations Security Council of the steps taken in pursuance of para 8 (ii, iii and iv) above, to facilitate coordination between the AU and the United Nations, and

vi) **encourages** the Chairperson of the Union, the Chairperson of the Peace and Security Council and the Chairperson of the Commission to request their respective representatives to the United Nations, in New York, to present, as soon as possible, the position of Council as stated above to the Security Council to seek its support and understanding;

12. **Decides** to extend, for a further period of 12 months, the mandate of UNAMID, as determined by United Nations Security Council resolution 1769(2007) of 31 July 2007, and **requests** the Security Council to do the same. Council **urges** the Government of the Sudan to extend unreserved cooperation to UNAMID and take all required steps to guarantee the security and safety of its personnel, in order to facilitate the early completion of its deployment and the effective implementation of its mandate as recalled above. Council **further urges** the international community to provide the necessary support, particularly with respect to logistics and other equipment, to enable UNAMID carry out its mandate more effectively;

13. **Stresses** the need for UNAMID operations to be conducted in a manner fully consistent with the hybrid nature of the peacekeeping operation deployed in Darfur, and, in this respect, Council **requests** the Commission to take all the necessary steps to ensure that the AU fully play its role in the conduct of the operations of UNAMID and the implementation of its mandate, including through appropriate consultations with the United Nations Secretariat;

14. **Expresses its full support** to the Joint AU/UN Chief Mediator and **urges** all Sudanese parties to fully cooperate with him in order to facilitate the early

resumption of the political dialogue and the conclusion of a comprehensive peace agreement that builds on the Darfur Peace Agreement signed in Abuja on 5 May 2006 and addresses all the issues at hand, including those relating to the combating of impunity and the promotion of reconciliation and healing in Darfur. In this respect, Council **welcomes** the steps being taken by the Sudanese stakeholders with the view of accelerating the restoration of peace, stability and reconciliation in Darfur;

15. **Requests** the Chairperson of the Commission to take all the necessary steps for the implementation of this decision and to mobilize the support of AU partners to this end;

16. **Decides** to remain seized of this matter.